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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

NGUYEN, PHUONGCHAU BA

ART UNIT

PAPER NUMBER

2665

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/469,982

Applicant(s)

MOSKOVICH ET AL.

Examiner

Phuongchau Ba Nguyen

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9,11 and 13-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,11,13-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections – 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3–6, 9, 11, 13–16 are rejected under 35 U.S.C. 102(e) as being anticipated by Moskovich (6,441,931).

Regarding claims 1, 9, and 11:

Moskovich discloses a method for a probe 801 to negotiate a common mode of communication between two nodes (705 & 710), comprising:

a) establishing a first communication path 720-721 between the probe and a first node 705;

b) establishing a second communication path 722-723 between the probe and a second node 710;

c) establishing a third communication path 905-906 through the probe, the third communication path 905 coupling the first 720-721 and second 722-723 communication paths by establishing a point to point link between the first and second nodes in order to provide a negotiated common mode () of operation between the first node (104a) and the second node wherein the probe includes a bypass mode {col.7, lines 64-65} in which data bypasses the probe and a pass 907-908 through mode in which data is monitored by the probe.

Regarding claims 3, 13:

Moskovich further discloses wherein establishing the first communication path between the probe and the first node comprises negotiating a mode of operation with the first node {col.7, lines 1-5}.

Regarding claims 4, 14:

Moskovich further discloses wherein negotiating a mode of operation with the first node comprises negotiating a speed of a transmission of data over the first communication path between the probe and the first node {col.8, lines 39-48}.

Regarding claims 5, 15:

Moskovich further discloses wherein negotiating a mode of operation with the first node comprises negotiating one of half duplex and full duplex communication over the first communication path between the probe and the first node {col.7, lines 1-5}.

Regarding claims 6, 16:

Moskovich further discloses wherein establishing a second communication path between the probe and the second node comprises negotiating a mode of operation with the second node {col.7, lines 1-5}.

Claim Rejections – 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-8 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moskovich in view of Scott (5,953,340).

Regarding claims 7, 17:

Moskovich further discloses wherein establishing a third communication path through the probe, the third communication path coupling the first and second communication paths to provide a common mode of operation between

the first node and the second node {col.2, lines 6-16, 33-43}{col.2, lines 6-16, 33-43}.

Moskovich does not disclose comparing the mode of operation with the first node and the mode of operation with the second node; and selecting one of multiple communication paths through the probe as the third communication path that provides a common mode of operation between the first node and the second node.

However, in the same field of endeavor, Scott comprises comparing the mode of operation with the first node and the mode of operation with the second node {col.5, lines 22-24}; and selecting one of multiple communication paths through the probe as the third communication path that provides a common mode of operation between the first node and the second node {col.5, lines 22-24}. Therefore, it would have been obvious to an artisan to apply Scott's teaching to Moskovich's system and the motivation being to easily manage, upgraded, and reconfigured without a need to modify the coupling at ports {col.5, lines 31-33}.

Regarding claims 8, 18:

Moskovich does not explicitly disclose the common mode of operation between the first node and the second node is the best mode of operation available between the first node and the second node.

However, in the same field of endeavor, Scott also discloses wherein the common mode of operation between the first node and the second node is the best mode of operation available between the first node and the second node {col.5, lines 22–24}. Therefore, it would have been obvious to an artisan to apply Scott's teaching to Moskovich's system and the motivation being to automatically place the data device (node) in the proper repeater domain and to easily manage, upgrade, and reconfigure without a need to modify the couplings at ports {col.5, lines 31–33}.

Response to Arguments

5. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchau Ba Nguyen whose

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telephone number is 703-305-0093. The examiner can normally be reached on Monday-Friday 10:00AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on 703-308-6602. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.


Phuongchau Ba Nguyen
Examiner
Art Unit 2665

August 25, 2003

